KATHLENE W. LOWE (SBN 145404)
KENT J. SCHMIDT (SBN 195969)
JOHN P. CLEVELAND (SBN 239749)
DORSEY & WHITNEY LLP
38 Technology Drive, Suite 100
Irvine, CA 92618-5310
Telephone: (949) 932-3600
Facsimile: (949) 932-3601

Attorneys for Defendant
NEW ALBERTSON'S, INC.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

RAYMOND W. LONDON, on behalf of Himself and All Others Similarly Situated,

Plaintiff,

vs.

NEW ALBERTSON'S, INC.; CERBERUS CAPITAL MANAGEMENT (CALIFORNIA), LLC; and DOES 1 through 25, inclusive,

Defendants.

CASE NO.: 08-1173 HC AB

Assigned to: Hon. Marilyn Huff

NOTICE OF CONSTITUTIONAL CHALLENGE TO STATE STATUTES

Hearing:
Date: August 11, 2008
Time: 10:30 a.m.
Courtroom: 13, Fifth Floor

Complaint filed: May 29, 2008

/ / /

/ / /

/ / /

TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

Pursuant to Fed. R. Civ. Proc. 5.1(a)(1)(B), Defendant New Albertson's, Inc. ("New Albertson's") respectfully files this Notice of the July 10, 2008 filing of a motion to dismiss this action based, among other reasons, on its assertion that First Amendment to the United State Constitution bars the application of two California statutes to the Conduct at Issue (defined below). In other words, New Albertson's does not challenge the constitutionality of either statute on its face, and instead challenges them only as applied to the Conduct at Issue.

The Conduct at Issue is New Albertson's alleged sale of "anonymized" pharmacy records to third parties. "Anonymized," as used herein, means that all such records have been stripped of all "medical information" (as that term is defined in Cal. Civil Code § 56.05(g)) prior to their transmission to any third party.

New Albertson's asserts in its motion to dismiss that the First Amendment prevents application of the following two California statutes to the Conduct at Issue:

1. The California Confidentiality of Medical Information Act ("CMIA"), Cal. Civil Code §§ 56 *et seq.*; and

2. The California Unfair Competition Law ("UCL"), Cal. Business & Professions Code §§ 17200 *et seq.*

Pursuant to Rule 5.1(a)(2), New Albertson's further certifies that it has served this Notice and all filings relating to its motion to dismiss on the Attorney General of the State of California, as reflected in the Certificate of Service filed concurrently herewith.

Dated: July 10, 2008

DORSEY & WHITNEY LLP

By: [signature]
KATHLENE W. LOWE
KENT J. SCHMIDT
JOHN P. CLEVELAND
Attorneys for Defendant
NEW ALBERTSON'S, INC.